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Supreme Court, U.S.
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No. 00-819
IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

THE CITY OF NEW YORK,

Petitioner,

-v-

ERIK M.,

Respondent.

On Petition for Writ of Certiorari to the
New York State Supreme Court Appellate Division, First Department

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent Erik M. asks leave to file the attached Brief in Opposition to a Petition for Writ of Certiorari and to proceed in forma pauperis. Respondent has been granted leave so to proceed in the state courts of New York. Respondent's affidavit in support of this motion is attached hereto.

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90 Church Street, 15th Floor
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Raymond E. Rogers

RAYMOND E. ROGERS*
Of Counsel
*Counsel of Record
December 20, 2000

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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

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THE CITY OF NEW YORK,	:	No. 00-819
Petitioner	:	
-v-	:	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
ERIK M.,	:	
Respondent.	:	
	:	

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INSTRUCTIONS

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

AFFIDAVIT IN SUPPORT OF MOTION

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Erik Moats

Date: 12-04-00

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
	You	You
Employment	$ N/A	$ N/A
Self-employment	$ N/A	$ N/A
Income from real property (such as rental income)	$ N/A	$ N/A
Interest and dividends	$ N/A	$ N/A
Gifts	$ N/A	$ N/A
Alimony	$ N/A	$ N/A
Child support	$ N/A	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ N/A	$ N/A
Disability (such as social security, insurance payments)	$ N/A	$ N/A
Unemployment payments	$ N/A	$ N/A
Public-assistance (such as welfare)	$ N/A	$ N/A
Other (specify): _____	$_____	$_____
Total monthly income:	$ N/A	$ N/A

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

4. How much cash do you and your spouse have? $ see attached

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
N/A	N/A	Make & year: N/A
		Model:
		Registration #:

Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ N/A	$ N/A
Are real-estate taxes included? [ ] Yes [ ] No		
Is property insurance included? [ ] Yes [ ] No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	$ N/A	$ N/A
Home maintenance (repairs and upkeep)	$ N/A	$ N/A
Food	$ N/A	$ N/A
Clothing	$ N/A	$ N/A
Laundry and dry-cleaning	$ N/A	$ N/A
Medical and dental expenses	$ N/A	$ N/A
Transportation (not including motor vehicle payments)	$ N/A	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ N/A	$ N/A
Insurance (not deducted from wages or included in Mortgage payments)	$ N/A	$ N/A
Homeowner's or renter's	$ N/A	$ N/A
Life	$ N/A	$ N/A
Health	$ N/A	$ N/A
Motor Vehicle	$ N/A	$ N/A

Other: _____	$ N/A	$ N/A
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	$ N/A	$ N/A
Installment payments	$ N/A	$ N/A
Motor Vehicle	$ N/A	$ N/A
Credit card (name): _____	$ N/A	$ N/A
Department store (name): _____	$ N/A	$ N/A
Other: _____	$ N/A	$ N/A
Alimony, maintenance, and support paid to others	$ N/A	$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ N/A	$ N/A
Other (specify): _____	$ N/A	$ N/A
Total monthly expenses:	$ N/A	$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
[ ] Yes [X] No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? Yes (No)
If yes, how much? $_____
If yes, state the attorney's name, address, and telephone number:

NO

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[ ] Yes [X] No
If yes, how much? $_____
If yes, state the person's name, address, and telephone number:

NO

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.
Clinton Correctional Facility Annex
Dannemora, NY 12929
Your daytime phone number: 518 - 492-2511
Your age: 20 Your years of schooling: GED
Your social-security number: _____

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209-INMATE BALANCE SCREEN

PHONE: (518) 492 2511 EXT: 2000
FAX: (518) 492 2511 EXT: 2099
CURRENT FACILITY: CLINTON

NYSID: 88518120
DOB: 11/06/80
FULL NAME: MORALES ERIK
DIN: 00A1614

SPENDABLE BALANCE: 0.00

ENCUMBRANCES	
TOTAL:	155.00
COLLECTED:	55.68
OUTSTANDING:	99.32

	SPENDABLE FOR LAST SIX MONTHS	TOTAL DEPOSITS FOR LAST SIX MONTHS
OLDEST	4.63	15.60
"	4.61	9.92
"	2.67	16.00
"	2.35	12.40
V	13.62	43.30
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RAYMOND E. ROGERS*
Of Counsel

*Counsel of Record

December 20, 2000

QUESTION PRESENTED

Whether the warrantless and non-consensual search of the respondent's closed bedroom dresser drawer violated the Fourth and Fourteenth Amendments to the United States Constitution, where the sole justification for the police action was the investigation of a suicide that occurred in the bedroom.

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IN THE SUPREME COURT
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THE CITY OF NEW YORK,	:	No. 00-819
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-v-	:	
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Respondent.	:	
	:	

STATEMENT OF THE CASE

On October 22, 1996, the Corporation Counsel of the City of New York (the petitioner in this Court) filed a juvenile delinquency petition in New York County Family Court charging the then fifteen-year-old respondent, Erik M., with the commission of six delinquent acts regarding the possession of crack cocaine discovered as the result of an October 18, 1996, police search of a closed dresser drawer in the respondent's bedroom. On October 23, 1996, the respondent filed a motion to suppress all evidence the police had obtained as a result of the search of the bedroom on the ground the search and seizure violated the federal constitution and state law.

At the suppression hearing held in New York County Family Court on November 19, 1996, New York City Police Officer Michael Oliver, who at the time of the hearing had been a member of the force for three years and had been stationed in the 30th Precinct for over a year, testified that on October 18, 1996, at 8:00 a.m., he was in a marked patrol car with his partner (Steven Helman), both in uniform, when they received a radio run regarding an emotionally disturbed person at 602 West 137th Street, apartment 27, in Manhattan (A4-6, 20, 27-28).* On their way to the location, the radio dispatcher clarified that the purpose of the run was a report of a suicide by hanging at that address (A5). When they arrived at that address a few minutes after 8:00 a.m., respondent's father opened the door to the apartment and let the officers inside (A6, 20). Inside the apartment, the officer also saw respondent and his mother and brother (A7). Officers Oliver and Helman were the first members of the force to arrive, and they were joined by at least four other police officers, including a sergeant (A21). Neither Officer Oliver nor Officer Helman nor the police sergeant who arrived speaks Spanish, the principal language spoken by

*Parenthetical citations refer to the pages of the transcripts of the suppression hearing held in the New York County Family Court on the following dates: A--11/19/96 (36-page session before recall of case) and B--11/19/96 (23-page session after recall of case).

respondent's parents (A22-23). Officer Carrasco, the Youth Officer at the 30th Precinct, arrived at the apartment shortly after Officer Oliver, and an Officer Sanchez also came to the apartment (A25-26).

Respondent's father led the officers to a room in the apartment where he struggled to push the door open, put his head inside the room, and then stepped away from the door with tears in his eyes (A7). Officer Oliver entered that room and observed "a young woman who was hanging from the door" and who was "apparently dead" (A8). Officer Oliver looked around the room for "any signs of foul play" but saw none (A8). It appeared to Officer Oliver that the woman had committed suicide (A8, 22). Inside the room was a single bed and a dresser with a mirror that had respondent's first name on a piece of paper attached to it (A9).

Officer Oliver went to the kitchen of the apartment with his partner and asked the members of the M. family who the woman was and what had happened (A9, 26-27). At least four other police officers were also in the apartment at the time of this conversation; they were in the hallway (A27). Officer Oliver testified that "[b]ecause of the language barrier [they were] having a hard time understanding each other and from the part we did understand because [respondent] does speak English, [he] could not give me a straight answer as to who this person was. I could

not get full identification" (A9). Respondent did tell the officers that the woman's name was, "possibly, Lilly" (A9). Respondent and his father told the officers that the young woman had been staying in the apartment for "approximately a month" (A10). Respondent told the officer that the woman, whom he described as his girlfriend, had been staying in his bedroom (A14-15, 30-31). Members of the M. family also told the officer that the young woman's mother "was possibly in jail in Texas" and the young woman had previously "been staying on 135th Street. They were not sure of the exact address" (A16). The officer was trying to identify the deceased because "anytime we have a . . . dead human body, we have to try to make--we have to try [to] ascertain who this person is, to make notifications as to the family or next of kin or someone who can identify her" (A10).

After talking to the M. family for approximately five minutes regarding the identity of the young woman, Officer Oliver, "[b]eing that I could not ascertain exactly who this person was . . . re-entered the bedroom and proceeded to search for some sort of identification" (A11). Officer Oliver never testified that he asked or received permission from any member of the M. family to conduct a search of the apartment. Upon his second entry to the bedroom, Officer Oliver was accompanied by Officer Helman (A25).

The officer hoped to find "a pocketbook or some school I.D. Anything with her name, address on it" (A15). Officer Oliver went to the bedroom because "that is where that person was and I wanted to check the immediate surroundings" (A12). The officer "immediately went to the dresser drawer. The first drawer I opened which was the top left drawer. It had contained an amount of money, drugs and drug paraphernalia" (A11). The dresser drawer was closed at the time he entered the room, and he opened the drawer in order to search it (A29). Officer Oliver reported his discovery to the police sergeant, who had earlier arrived at the apartment in response to the same radio run (A11).

Officer Oliver testified he was familiar with the New York City Police Patrol Guide, which contains police department "procedures and guidelines" (A12). The part of the Guide, which was dated August 9, 1985, concerning the procedures regarding dead human bodies was received in evidence as exhibit one (A13). In chapter 106-9, under the heading DEAD HUMAN BODY--GENERAL PROCEDURE, the guide states that the purpose of the advice is "[t]o ensure that notifications to concerned authorities and relatives are properly made and recorded, evidence is preserved and proper disposition is made of dead human bodies." The guide then contains instructions for three classes of police officers--uniformed

members of the service, desk officers, and patrol supervisors. Paragraph 10 provides that the primary duty for uniformed members of the service is to prevent anyone from disturbing the body. In paragraph 19 of the instructions for patrol supervisors, the guide states: "Have body and premises searched in the presence of witnesses, 'whenever possible,' if deceased resided alone or died at a location other than residence." Officer Oliver, who was not a patrol supervisor but rather a uniformed member of the service, claimed that he followed paragraph nineteen of that section and searched the premises because the young woman "died in the location other than her residence" (A14).

Officer Oliver testified that when he re-entered the bedroom to conduct the search, he believed that what had occurred was an apparent suicide (A16-17). Detectives from the 30th Precinct were also present at the apartment that morning, but Officer Oliver testified that he was not helping them investigate the scene but rather he was "[j]ust searching for identification" (A17).

In summation at the suppression hearing, respondent's counsel argued that the evidence should be suppressed because it was discovered as a result of a warrantless search of respondent's bedroom by a police officer acting without exigent circumstances and without consent (B3-16). The prosecutor responded that the

police action was an appropriate administrative or inventory search, not a search to discover evidence of a crime(B17-20).

On December 5, 1996, the Family Court issued a written decision denying the motion to suppress. The Family Court agreed with the prosecution that the search of the bedroom was a proper inventory search, and the court also ruled that respondent's parents consented to the search (Decision at 2). According to the Family Court, the police may legally conduct a warrantless inventory search of a private residence so long as the motive for the search is not to discover evidence of a crime (Decision at 2-4). Despite the fact that the prosecution did not rely on a consent theory and never offered any evidence that Officer Oliver received consent from anyone to search respondent's bedroom, the Family Court nevertheless found that respondent's parents consented to that search because "[t]hey notified the police when they discovered a dead body in their son's room and sought police assistance in their home to deal with the situation" (Decision at 4). According to the Family Court, the police search of closed drawers in respondent's bedroom was no greater an intrusion than the legitimate police presence in the home (Decision at 4).

At the subsequent fact-finding hearing, the prosecution introduced the evidence obtained as a result of the police search

of the respondent's closed bedroom dresser drawer. That evidence included $277 in cash, 98 empty crack vials, 19 small plastic bags containing crack cocaine, shotgun shells, and a handwritten note. At the conclusion of the fact-finding hearing on January 24, 1997, the Family Court found that the respondent committed the delinquent acts of criminal possession of a controlled substance in the third, fifth (two counts), and seventh degrees, and of criminally using drug paraphernalia in the second degree. On February 3, 1997, the Family Court adjudicated the respondent a juvenile delinquent and placed him with the New York State Division for Youth for a period of fifteen months.

The respondent appealed to the Appellate Division, First Department, arguing that the police search of the closed bedroom dresser drawer had been illegal and that all the evidence obtained as a result of the search should be suppressed. In a decision issued October 28, 1999, the First Department reversed the Family Court and granted the motion to suppress. In re Erik M., 265 A.D.2d 256, 697 N.Y.S.2d 35 (1st Dept. 1999). The court held as follows:

> It is a basic tenet of constitutional law that, absent a search warrant, a search is unreasonable unless it falls within one of the specifically recognized exceptions to the warrant requirement. (People v. Hodge,

> 44 N.Y.2d 557). The presentment agency argues that the police conduct in this case falls within the scope of one of those exceptions, namely, that it was a permissible administrative search. We cannot agree.
>
> The search at issue in this case, which was rooted in the investigation of the apparent suicide of a young woman, does not fall within the parameters of the exception permitting warrantless searches for administrative purposes (see, New York v. Burger, 482 U.S. 691; Donovan v. Dewey, 452 U.S. 594; Camara v. Municipal Court of San Francisco, 387 U.S. 523). Nor can it be said that there was any exigency justifying a warrantless search since the police could easily have secured the apartment and obtained a warrant. Additionally, contrary to the conclusion of the Family Court, this search did not fall within the parameters of a valid inventory search (see, Illinois v. Lafayette, 462 U.S. 640; South Dakota v. Opperman, 428 U.S. 364).
>
> Accordingly, since the presentment agency has failed to demonstrate that the search in this case fell within any recognized exception to the warrant requirement, suppression of the items found in appellant's dresser drawer is mandated.

265 A.D.2d at 256-57; 697 N.Y.S.2d at 36-37.

On December 2, 1999, the appellant filed a notice of appeal to the New York Court of Appeals from the First Department's October 28, 1999, order, claiming that it had an appeal as of right. On February 22, 2000, the New York Court of Appeals

dismissed the appellant's appeal upon the ground that it did not present a substantial constitutional question. On April 4, 2000, the prosecution filed, in the Appellate Division, First Department, a motion for leave to appeal to the New York Court of Appeals the First Department's October 28, 1999, order. On May 25, 2000, the First Department denied the appellant's motion for leave to appeal. On June 15, 2000, the appellant filed, in the New York Court of Appeals, a motion for leave to appeal the First Department's October 28, 1999, order. On September 5, 2000, the New York Court of Appeals denied the appellant's motion for leave to appeal. On November 8, 2000, the appellant filed a petition for writ of certiorari in this Court, requesting review of the order of the New York State Supreme Court, Appellate Division, First Department.

ARGUMENT

This Court's rules provide that it will consider granting review on certiorari where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." Sup. Ct. R. 10(b). In its petition, however, the City of New York fails to cite even one decision of another state or federal court that conflicts with the holding of the New York State Supreme Court, Appellate Division, First

Department, in this case, and the respondent is also unaware of any such conflicting decisions. Thus certiorari is not warranted by any split of opinion in the lower courts.

This Court's rules also provide that certiorari review may be appropriate where "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). This Court has settled in Flippo v. West Virginia, 528 U.S. 11, 13-15 (1999), Thompson v. Louisiana, 469 U.S. 17, 18-23 (1984), and Mincey v. Arizona, 437 U.S. 385, 389-95 (1978), the question of whether under the Fourth Amendment the police may make a warrantless search of a home where a dead body has been discovered. Those cases all held that, absent a warrant or consent, such searches violated the Constitution. In the present case, the police did not attempt to obtain a warrant, nor did the police even ask any member of the respondent's family for consent to search the home. Thus, the New York State Supreme Court Appellate Division merely applied well settled constitutional principles to the facts of this case.

In addition, the search violated the New York City Police Department's Patrol Guide in that the officer who conducted the

search, Officer Oliver, was a uniformed member of the service who, according to the patrol guide, was to do no more than prevent anyone from disturbing the body. Only a patrol supervisor, according to the guidelines, had the authority to authorize a search. Thus Officer Oliver's search not only violated the Constitution but also the police department's own rules.

The appellant relies on cases upholding police inventory searches of cars and bags that are lawfully in police custody. The search in the present case, however, did not involve a lawfully seized car or bag but rather concerned a search of an area entitled to the highest level of constitutional protection — a closed dresser drawer in the respondent's bedroom — a place for which no court has ever authorized a warrantless "administrative" search. In fact, this Court has held that routine inspections of homes to determine whether any health or safety laws are being violated are not allowed without the issuance of a warrant. Camara v. Municipal Court, 387 U.S. 523, 534 (1967). Warrantless administrative or inventory searches of the home — as opposed to cars or containers carried by arrestees — are plainly unconstitutional. The New York State Supreme Court Appellate Division correctly applied this Court's precedents. This case, consequently, does not warrant certiorari review.

CONCLUSION

For the reasons stated above, respondent respectfully requests this Court to deny the petition for writ of certiorari.

Respectfully submitted,

MONICA DRINANE
Attorney for Respondent

Raymond E. Rogers

RAYMOND E. ROGERS
Of Counsel

December 20, 2000